IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.33 of 2008
NUTAN KUMAR PRABHAT
Versus
STATE OF BIHAR & ANR
With
CR. REV. No.713 of 2008
MUNNU RAI @ VIVEK KUMAR RAI
Versus
STATE OF BIHAR
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3 1.9.2008 Both the Revision applications have been filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Criminal revision No.33 of 2008 has been preferred against the order dated 20.12.2007 passed by the Vth Additional Sessions Judge, Bettiah,West Champaran in Criminal Appeal No. 186/2007 whereby the order dated 17.8.2007 passed by Juvenile Justice Board in J.J.B.No.205 of 2007 has been set aside and Opposite Party no.2 has been declared juvenile.

Criminal revision no.713 of 2008 has been preferred against the order dated 9.7.2008 passed by 1st Additional Sessions Judge, Bettiah in Criminal Appeal no. 76/08 thereby the learned Additional Sessions Judge has confirmed the order of Juvenile Justice Board regarding rejection of bail of the petitioner.

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Criminal Revision No.33 of 2008

Learned counsel for the petitioner submitted that the learned Additional Sessions Judge has not properly appreciated the oral as well as documentary evidence adduced by opposite party no.2. He ought to have held that the finding of the Juvenile Justice Board on the

point of age of opposite party no.2 is factually and legally correct. It is further submitted that all documents filed by opposite party no.2 on the point of age are forged and fabricated and hence learned Juvenile Justice Board has rightly refused to rely on them. Similarly the Juvenile Justice Board on the basis of the report of Medical Board has rightly held that opposite party no.2 was more than eighteen years on the alleged date of occurrence.

On the other hand, learned counsel for opposite party no.2 submitted that the learned Additional Judge has rightly set aside the order of Juvenile Justice Board refusing to declare the opposite party no.2 as juvenile on the alleged date of occurrence. According to school registration as well as Medical Board the opposite party no.2 was juvenile on the relevant date. Hence, the learned Additional Sessions Judge held the opposite party no.2 as juvenile.

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In this case the date of occurrence is in between 8.3.2007 and 15.3.2007.In course of inquiry before the Juvenile Justice Board the opposite party no.2 produced admit card issued by the Bihar School Examination Board which bears the date of birth of opposite party no.2 as 5.2.1991.In addition to it the father of opposite party no.2 has also been examined as P.W.1 (Satrughan Rai) in support of his age.

Opposite party no.2 was also examined by the Medical Board on 2.5.2007. The Medical Board assessed the age of opposite party no.2 on the date of examination as 17 to 18 years. According to this document the age of opposite party no.2 on the alleged date of

occurrence was less than eighteen years.

It appears from the order of the lower courts that both courts have not relied upon the admit card or evidence of father of opposite party no.2. However, so far the report of Medical Board is concerned, the Juvenile Justice Board has not given any specific finding on it ; neither rejected it nor relied upon whereas the learned Additional Sessions Judge relying upon the report of the Medical Board has held the opposite party no.2 as juvenile.

In the opinion of this Court the learned additional Sessions Judge has rightly relied upon the report of the Medical Board. There is nothing on record to dispute the report of the Medical Board. The prosecution did not produce any documentary evidence in denial of the report of the Medical Board or age of opposite party no.2. Therefore, there was no opinion left to the Court below than to accept and rely on the report of the Medical Board.

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In the facts and circumstances, I find no merit in this revision application. Accordingly, Criminal revision no.33 of 2008 is hereby rejected.

Criminal Revision No.713 of 2008

So far the criminal revision no.713 of 2008 is concerned, this is for grant of bail.

The petitioner is one of the accused in a case registered under Sections 302/201/34 of the Indian Penal Code. The case is based on ‘last seen’ and circumstantial evidence. The petitioner was minor on the alleged date of occurrence. He has already been declared

juvenile. He is in jail custody since 20.3.2007.

Thus, having regard to the facts and circumstances, the petitioner ,namely, Munnu Rai @ Vivek Kumar Rai is directed to be enlarged on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Juvenile Justice Board, Bettiah in J.J.B.Case No.256/08.

This application is accordingly allowed and the impugned order dated 9.7.2008 is hereby set aside.

B.Jha **(Ghanshyam Prasad)**

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